

FINDING OF EMERGENCY

These regulations are to be implemented on an emergency basis for the immediate preservation of the public peace, health and safety or general welfare, within the meaning of Government Code section 11346.1. Further, Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. To determine the OAL five-day comment period, please refer to <http://www.oal.ca.gov/>.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY
Senate Bill 855, Chapter 29, Statutes of 2014 (SB 855) authorizes the Department to take quick, effective action to protect the health and safety of residents of community care facilities and to minimize the effects of transfer trauma that accompany the abrupt transfer of clients by appointing a temporary manager to assume the operation of a facility that is found to be in a condition in which continued operation by the licensee or his or her representative presents a substantial probability of imminent danger of serious physical harm or death to the residents pursuant to Health and Safety Code sections 1546.1 and 1569.481. These impending emergencies and immediate substantiated health or safety risks require the prompt establishment and implementation of the temporary manager role in these Adult Community Care Facilities and Residential Care Facilities for the Elderly (RCFEs). To aid this effort, Health and Safety Code section 1546 and 1569.48 authorizes the creation of an emergency client contingency account within the Technical Assistance Fund to be used for the care and relocation of residents when a facility's license is revoked or temporarily suspended.

In the Department's experience, the lack of a well-established process and procedure for appointing a temporary manager in regulations delays the Department's ability to effectively carry out the intent of the statute and ensure quality of care does not decline during these emergencies.

The filing of this emergency rulemaking, based on the Department's experience, is necessary to avoid imminent danger to residents in adult residential community care facilities and RCFEs that have been served a temporary suspension order (TSO) or are currently undergoing revocation. Facilities that have been issued a TSO are found to be in a condition in which continued operation by the licensee or his or her representative presents a substantial probability of imminent danger of serious physical harm or death to residents. Similarly, RCFEs with a license currently undergoing revocation or forfeiture have residents who are subject to serious health or safety risks. Many RCFEs with a license undergoing revocation have engaged in inimical conduct, had serious regulation violations, or continued to violate licensing regulations despite multiple citations.

In these facilities, the following circumstances can exacerbate the substantial threat to the health and safety of these residents: the immediate relocation of the residents is not feasible due to transfer trauma, there is a lack of available alternative placements, or other emergency considerations for the residents must be accounted for. The unexpected circumstances and emergency procedures that accompany the forfeiture or revocation of a license or TSO cause confusion, stress and can result in serious consequences for these vulnerable populations.

In just 6 months prior to April 2018, there were a total of:

- Eight adult residential facilities and RCFEs that either have been or are currently being issued a TSO followed by a license revocation.
- 38 RCFEs that either have undergone or are currently undergoing a license revocation.
- 10 RCFEs that either have undergone or are currently undergoing an expedited license revocation.

These numbers show a particularly rapid increase in the number of TSOs and revocations issued compared to the previous 5 years. This increase demonstrates growing importance of the Department's role in taking quick, effective action during these circumstances and thereby the growing importance of having regulations for temporary managers in place.

In early April 2018, the Department issued a TSO to a facility in San Andreas due to serious financial distress. This emergency included facility staff who had unpaid wages and were ready to leave the facility right away. Vulnerable residents were at risk to be left alone with no staff to provide needed care and supervision. In response, the Department issued a TSO and initiated the use of a temporary manager. This emergency circumstance, in which each day was critical, required the Department to respond without standardized rules providing clear direction on roles and responsibilities, the selection process and financial documentation for the use of a temporary manager. The lack of an established, standardized process and procedures in regulations for appointing a temporary manager delayed the Department's ability to carry out the intent of the statute and to serve, aid and protect these needy and vulnerable adults.

Without these regulatory standards and specific procedures that outline the process for securing a temporary manager, the Department is hampered in its ability to vet applicants in advance of the emergency in a fair and consistent way and make an informed decision on an appropriate temporary manager for appointment. These regulations also enable the Department, with advance planning, to have a more contemplative approach to developing a pool of applicants.

The unpredictability of when the next imminent risk to health and safety will occur, predicates the need for these emergency regulations, which establish the mechanism that enables the Department to promptly appoint a qualified temporary manager. These regulations require the Department to establish a temporary manager candidate list that contains approved applicants who have demonstrated that they meet the minimum

qualifications set forth by the Department. The establishment of this list enables the Department to immediately send an appointment notice to a pool of candidates that have already been pre-screened and vetted. The appointment process outlined in these regulations provide clear requirements and procedures for the temporary manager selection. These regulations are developed based on lessons learned from previous temporary manager appointments and include the temporary manager associated duties, qualifications and requirements for selection, appointment and funding.

This Temporary Management of Adult Community Care Facilities and Residential Care Facilities for the Elderly regulation package shall be processed as emergency regulations with OAL as the Legislature enacted the provisions of SB 855 to authorize the California Department of Social Services (CDSS) to take quick, effective action to protect the health and safety of residents of community care facilities and Residential Care Facilities for the Elderly and to minimize the effects of transfer trauma that accompany the abrupt transfer of residents by appointing a temporary manager to assume the operation of a facility that is found to be in a condition in which continued operation by the licensee or his or her representative presents a substantial probability of imminent danger of serious physical harm or death to the residents pursuant to Health and Safety Code sections 1546.1 and 1569.481.

The previously mentioned facilities undergoing forfeiture, revocation or a TSO and the Department's experiences in appointing a temporary manager, exemplify the need and urgency for having a well-established process and procedure for appointing a temporary manager. These regulations ensure a qualified temporary manager is promptly appointed and equipped to take all necessary steps and make best efforts to eliminate any substantial threat to the health and safety of residents or complete the transfer of residents to alternative placements pursuant to Section 1556, 1569.525 or 1569.682 of the Health and Safety Code.

It is the intent of the Department to promulgate these emergency regulations to ensure a qualified temporary manager can be promptly appointed during an emergency. For this as well as the aforementioned reasons the entire package is properly deemed emergency.

INFORMATIVE DIGEST

In October 2013, 19 frail seniors were abandoned at a community care facility in Castro Valley by the licensee after CDSS began license revocation proceedings due to the facility's numerous violations that threatened the health and safety of the residents. The licensee abandoned the facility and left the country, leaving the residents and staff to their own resources. This tragic event led to numerous reform bills and prompted the Legislature to adopt SB 855.

Current regulations for adult community care facilities and Residential Care Facilities for the Elderly do not provide the needed specific provisions for the selection process and requirements of a temporary manager. The CDSS has determined that these proposed regulations will affect adult community care facilities and Residential Care Facilities for

the Elderly. These regulations will be adopted to implement SB 855 that established the role of a Temporary Manager.

For adult community care facilities and Residential Care Facilities for the Elderly, a temporary manager means the person, corporation, or other entity appointed temporarily by the CDSS as a substitute facility licensee or administrator with authority to hire, terminate, reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility's operation. The temporary manager assumes all responsibility for the facility and its clients and directs the daily operation of the facility and care and supervision activities of any person associated with the facility, including superseding the authority of the licensee and the administrator.

The CDSS has a crucial role in the oversight, licensure and enforcement of regulations for the temporary management of adult community care facilities and Residential Care Facilities for the Elderly. The regulations in this package are written to specify the requirements for the qualifications, selection and appointment of a temporary manager, the duties of the temporary manager as outlined in the facility improvement plan and the limitations on expenditures and encumbrances by the temporary manager.

Due to the imminent risk to health and safety that predicates the need to place a temporary manager appointment, this regulations package shall be processed as emergency regulations with the OAL. This is necessary in order to maintain immediate preservation of public peace, health and safety as well as the general welfare of the population that will be served when there is a need for a temporary manager appointment. It is the intent of CDSS to promulgate these emergency regulations to ensure the needs and services of the client population served by adult community care facilities and Residential Care Facilities for the Elderly are met.

The Department considered other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area (Licensing of temporary managers for adult community care facilities and Residential Care Facilities for the Elderly), and therefore, the Department finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting SB 855, Section 11 (Health and Safety Code section 1546.1) and Section 24 (Health and Safety Code section 1569.481), as well as with existing state regulations.

The following forms are incorporated by reference:

LIC 200TM (6/18)

LIC 215TM (6/18)

LIC 216TM (6/18)

Documents Relied Upon:

Senate Bill 855, Chapter 29, Statutes of 2014 (Sections 11 and 24).

COST ESTIMATE

1. Costs or Savings to State Agencies: Since 2013, the CDSS has executed two contracts for temporary managers and anticipates this trend to continue. Therefore, the fiscal impact of this regulation is expected to be minimal and absorbable within the existing budget.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: None
4. Federal Funding to State Agencies: None

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies. There are no state-mandated local costs in this order that require reimbursement under the laws of California. Implementation of the regulations only impact adult residential community care facilities or Residential Care Facilities for the Elderly with the applicable circumstances in Health and Safety Code section 1546.1(c) or 1569.481(c).

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Sections 1530, 1546.1, 1569.30 and 1569.481, Health and Safety Code. Subject regulations implement and make specific Sections 1546.1, 1550, 1550.5, 1556, 1569.19, 1569.481, 1569.482, 1569.50, 1569.525 and 1569.682, Health and Safety Code.